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J.C. PENNEY CORPORATION, INC.
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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 RAYMOND TSCHUDY,

13 Plaintiff,

14 v.

15 J.C. PENNEY CORPORATION, INC., a
16 Delaware Corporation; and DOES 1
through 100, inclusive,

17 Defendants.
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Case No. 11-CV-1011-JM-(CAB)

**CORRECTED DECLARATION OF
DOMINIC MESSIHA IN SUPPORT OF
DEFENDANT'S OPPOSITION TO
PLAINTIFF'S *EX PARTE* APPLICATION
SEEKING TO DISMISS PLAINTIFF
MATTHEW SHANNON'S CLAIMS, FILE
A SECOND AMENDED COMPLAINT,
AND VACATE DEFENDANT'S MOTION
TO COMPEL ARBITRATION AND
MOTION TO TRANSFER VENUE**

Judge: Hon. Jeffrey T. Miller
Trial Date: Not Set

DECLARATION OF DOMINIC MESSIHA

I, DOMINIC MESSIHA, declare as follows:

1. I am an attorney at law, licensed to practice in the State of California. I am admitted to practice law in this District. I am a shareholder with the law firm of Littler Mendelson and am appearing as counsel of record for Defendant J.C. Penney Corporation, Inc. I make this Declaration in support of Defendant's Opposition to Plaintiff's *Ex Parte* Application Seeking to Dismiss Plaintiff Matthew Shannon's Claims, File a Second Amended Complaint, and Vacate Defendant's Motion to Compel Arbitration and Motion to Transfer Venue. Except as otherwise indicated, I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, I could and would competently testify thereto.

2. As a result of the inadvertent omission of one page of a declaration in support of Defendant's Motion to Compel Arbitration and Stay Judicial Proceedings of Matthew Shannon's Claims and Motion to Transfer Venue of Matthew Shannon's Claims, the parties agreed to a short, one-week continuance of the hearing on the motions. Thereafter, Plaintiff instead requested that Defendant stipulate to Plaintiff's dismissal of Matthew Shannon from the lawsuit and leave to file a Second Amended Complaint ("SAC") adding two new Illinois plaintiffs in Mr. Shannon's stead. Defendant declined Plaintiff's request, but advised Plaintiff that it would be willing to stipulate to a fourteen-day continuance of the hearing and briefing schedule of Defendant's motions.

3. After Plaintiff filed the instant *Ex Parte* Application, I requested that Plaintiff stipulate to a joint motion to set forth a briefing schedule in which all pending and proposed motions, including Plaintiff's Motion for an Order Granting Leave to File a SAC, would be heard on the same day. Plaintiff declined my request, stating that such a schedule would not make sense inasmuch as the grant of his motion to dismiss Shannon would moot the instant Motion to Compel Arbitration and Motion to Transfer Venue. To the contrary, however, as explained in Defendant's Opposition to the *Ex Parte* Application, these issues will continue to apply with equal force to the proposed new class representatives.

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1 I declare under penalty of perjury pursuant to the laws of the State of California that the
2 foregoing is true and correct. Executed the 13th day of January, 2012, at Los Angeles, California,
3 County of Los Angeles.

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6 /s/ Dominic Messiha
7 DOMINIC MESSIHA
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